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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,716	01/02/2001	Francois Cottard	05725.0825-00	1011

22852 7590 12/19/2002

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

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DATE MAILED: 12/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/750,716

Applicant(s)

COTTARD ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/1/2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-88 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

- 1 This action is responsive to the amendment filed on October 01, 2002.
- 2 Claims 1-88 are pending in this application.

NEW GROUND OF REJECTION

Claim Rejections - 35 USC § 112

- 3 The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 is indefinite because the claim recites the limitation “ anhydride/C₃₀-C₃₆ α-olefin/alkyl maleate”. It is unclear whether the hydrocarbon chain is part of maleic anhydride or part of alkyl maleate. The specification does not provide any guidance. Clarification is required.

Claim 26 is indefinite because the claim recites the term “tri-block form”. The meaning of the term is unclear. Clarification is required.

Claim Rejections - 35 USC § 103

- 4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-16, 20-52 and 54-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagrange et al. (US' 5,984,975) in view of de la Mettrie et al. (US' 5,976,195).

Lagrange (US' 975) teaches hair dyeing compositions comprising oxidation dye such as paraphenylenediamine as claimed in claims 30-34 (see col. 6, formula IV), para-aminophenol as claimed in claims 39-40 (see col. 2, formula I'), thickening agents (see col. 10, lines 61-64), about 5.69 g AM of fatty alcohols such as oleic alcohol glycerolated with 4 moles of glycerol (78% AM) as claimed in claims 4-9, 49-50 and 88 (see col. 14, Example 7 to 16), from 0.05% to 7% of oxidation bases and couplers wherein the oxidation bases form 0.05% to 3.5% by weight of the composition which within the claimed ranges as claimed in claims 42 and 44 (see col. 10, lines 22-27), oxidation couplers such as m-aminophenol as claimed in claim 43 (, col. and col. 5, line 36), acid addition salts such as hydrochlorides, hydrobromides and sulfates as claimed in claim 45 (see col. 7, lines 47-48), heterocycloc bases such as pyridine derivatives as claimed in claim 41 (see col. 6, lines 24-25), double bases as claimed in claims 35-38 (see col. 8, formula VI), direct dye as claimed in claim 46 (see col. 10, lines 17-21), from 0.05% to 1.5% of antioxidant agents (reducing agents) such as sodium sulfite as claimed in claims 47-48 (see col. 10, lines 65-67 and col. 11, lines 1-4), from 20 volume of oxidizing agents such as hydrogen peroxide as claimed in claims 52 and 54-55 (see col. 11, line 45), from 0.5% to 55% of surfactants such as anionic, cationic and nonionic surfactants as claimed in claims 66, 68 and 69 (see col. 10, lines 28-42), from 0.1% to 5% of at least one thickening agent chosen from cellulose derivatives as claimed in claims 70-71 (see col. 10, lines 61-64). Lagrange also teaches dyeing composition having pH varies from 3 to 11, which within the claimed range as claimed in claim 56 (see col. 11, lines 41-42). Further, Lagrange teaches a method for dyeing hair similar to

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the method claimed in claims 72-77, when in the reference's method the dyeing composition described above after mixed just before use with a sufficient amount of an oxidizing solution to develop the dye, and the mixture obtained is applied to the keratinous fibers, in particular hair (see col. 11, lines 35-40).

The instant claims differ from the reference by reciting dyeing composition comprising thickening polymers having at least one fatty chain as claimed. Also, the reference fails to teach cationic polymers as claimed in claims 59-65. Further, the reference fails to teach kits for dyeing keratinous fibers as claimed in claims 78-86. However, Langrange teaches a hair dyeing composition comprising polymeric thickening polymers such as gum Arabic and acrylic acid polymer, which may be crosslinked with cellulose derivatives (see col. 10, lines 56-59).

De la Mettrie (US' 195) in analogous art of hair dyeing composition teaches a composition comprising thickening polymer comprising at least one fatty chain corresponds to the monomer of the formula (I) which is similar to the claimed formula (I) when in the reference's formula R' denotes H or CH₃, B denotes the ethylenoxy radical, n is zero or denotes an integer ranging from 1 to 100, R denotes a hydrocarbon radical selected from alkyl contain from 8 to 30 carbon atom as claimed (see col.3, lines 31-38 and formula (I)), cationic polymers such as quaternary polyammonium polymers of formulae (V) and (VI) which are similar to the claimed formulae (W) and (U) as claimed in claims 59-65 (see col. 7, formula (V) and formula (VI)).

Therefore, in view of teaching of the secondary reference one having ordinary skill in the art would be motivated to modify the primary reference by incorporating the thickening polymers and cationic polymers as taught by de la Mittre (US' 195) to make such dyeing

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compositions. Such modification would be obvious because the reference clearly suggests the use of thickening polymers in dyeing composition to obtain more chromatic (more luminous) shades (see US' 195, col. 1, lines 53-58) and, hence, a person of ordinary skill in the art would expect such compositions to have similar properties to those claimed, absent unexpected results.

Further, with respect to the claimed kits, it would have been obvious to one having ordinary skill in the art at the time of the invention to use kits for applying the dyeing composition to the hair as claimed because the primary reference teaches that the dyeing composition is just mixed before use with other oxidizing solution (see col. 11, lines 35-40) and, thus, a person of ordinary skill in the art can separate the dyeing composition using different devices or kits as claimed, absent unexpected results.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagrange et al. (US' 5,984,975) in view of de la Mettrie et al. (US' 5,976,195) and further, in view of de la Mitre et al. (US 5,989,295).

The disclosures of Lagrange and de la Mitre (US' 195) are summarized above. The combined references do not teach and disclose anionic thickening polymers having the claimed formulae (II) and (III).

De la Mettrie (US' 295) in another analogous art of hair dyeing composition teaches a composition comprising anionic amphiphobic polymers containing at least one hydrophobic unit of unsaturated olefinic carboxylic acids and at least one alkyl ester of unsaturated carboxylic acid of the formulae (I) and (II) which are similar to the claimed formulae (II) and (III) as claimed in claims 17-19 (see col. 3, lines 51-67 formula (I) and col. 4, lines 1-10 formula (II)).

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Therefore, in view of teaching of the secondary reference one having ordinary skill in the art would be motivated to modify the primary reference by incorporating the anionic thickening polymers as taught by de la Mittre (US' 295) to make such dyeing composition. Such modification would be obvious because the reference clearly suggests the use of thickening polymers in dyeing composition to obtain more chromatic (more luminous) shades (see US' 195, col. 1, lines 53-58) and, hence, a person of ordinary skill in the art would expect such compositions to have similar properties to those claimed, absent unexpected results.

Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lagrange et al. (US' 5,984,975) in view of de la Mettrie et al. (US' 5,976,195) and de la Mettrie et al. (US' 5,989,295) and further in view of Samain et al. (US 5,538,517).

The disclosures of Lagrange (US' 975), De la Mittre (US' 195) and De la Mittre (US' 295) are summarized above. None of the above-cited references teaches dyeing composition comprising enzymatic system as oxidizing agents.

Samain (US' 517) in other analogous art teaches a hair dyeing composition comprising oxidizing agents such as peroxidase enzyme (see col. 2, line 50).

Therefore, in view of teaching of the secondary reference one having ordinary skill in the art would be motivated to modify the primary reference by adding the peroxidase enzyme as an oxidizing agent as taught by Samain to make such a dyeing composition. Such modification would be obvious because Samain clearly teaches enzymatic source for generating hydrogen peroxide which has already presented as an oxidizing agent in the dyeing compositions of the above combined references and, thus, a person of ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

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Response to Applicant's Arguments

5 Applicant's arguments filed 10/1/2002 have been fully considered but they are rendered moot in view of new ground of rejection.

Conclusion

Therefore, in view of the teachings of the secondary references, one having ordinary skill in the art would have been motivated to modify the primary reference by using double bases, heterocyclic bases, cationic quaternary polymers, unsaturated carboxylic acids, allyl ether, allyl ester, acid addition salts, direct dyes and enzymes to make such a composition. Such modification would be obvious because one would expect that the use of these dyeing ingredients as taught by De la Mettrie (US' 195), De la Mettrie (US' 295) and Kaiser would be similarly useful and applicable to the analogous composition taught by Bhambhani.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

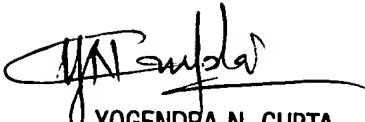
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

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Eisa 
December 11, 2002


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